

**TENNESSEE DEPARTMENT OF REVENUE
LETTER RULING #94-25**

WARNING

Letter rulings are binding on the Department only with respect to the individual taxpayer being addressed in the ruling. This presentation of the ruling in a redacted form is informational only. Rulings are made in response to particular facts presented and are not intended necessarily as statements of Department policy.

SUBJECT

Application of Tennessee sales and use tax to medical equipment used in the medical procedure called percutaneous transluminal coronary angioplasty.

SCOPE

This letter ruling is an interpretation and application of the tax law as it relates to a specific set of existing facts furnished to the department by the taxpayer. The rulings herein are binding upon the department, but applicable only to the individual taxpayer being addressed.

This letter ruling may be revoked or modified by the commissioner at any time. Such revocation or modification shall be effective retroactively unless the following conditions are met, in which case the revocation shall be prospective only:

- (A) The taxpayer must not have misstated or omitted material facts involved in the transaction;
- (B) Facts that develop later must not be materially different from the facts upon which the ruling was based;
- (C) The applicable law must not have been changed or amended;
- (D) The ruling must have been issued originally with respect to a prospective or proposed transaction; and
- (E) The taxpayer directly involved must have acted in good faith in relying upon the ruling and a retroactive revocation of the ruling must inure to his detriment.

FACTS

[THE TAXPAYER] manufactures and sells medical products used in the treatment of coronary artery disease through a procedure called percutaneous transluminal coronary angioplasty ("PTCA"). The [TAXPAYER'S] products are as follows:

1. Coronary balloon dilation catheters
2. Coronary guide wires
3. Coronary guiding catheters
4. Accessories
 - Indeflator inflation device
 - Angioject (syringe)
 - Hemostatic valve
 - Guide wire introducer
 - Torque device

PTCA is a procedure used to widen narrowings in the coronary artery caused by a gradual accumulation of plaque within the artery walls. When plaque builds up and narrows the arteries, less blood, and therefore less oxygen and other nutrients, reaches the heart muscle. This impairment of the arteries can lead to chest pain or to heart attack.

The above-mentioned [TAXPAYER'S] products are inserted into the body, guided to the correct branch of the coronary arteries, and positioned where the plaque build-up is located. A balloon is then inflated. This widens the opening within the coronary artery by splitting and compressing the plaque against the artery wall. When the coronary artery has been opened sufficiently, the balloon is deflated, and all the above-mentioned medical devices are removed from the body and disposed. As a result of the PTCA procedure, blood can flow more easily and normally through the formerly narrowed part of the coronary artery.

QUESTIONS

1. Are the [TAXPAYER'S] products exempt from Tennessee sales tax?
2. If any of the [TAXPAYER'S] products are determined to be taxable, can these products be purchased for resale if the Tennessee hospitals separately itemize these products on the patient's bill?
3. Can [THE TAXPAYER] accept a resale certificate, in good faith, from a hospital purchasing taxable medical products, and separately billing such taxable goods on patient invoices, if [THE TAXPAYER] does not have knowledge whether the hospital actually taxes such billable products to patients?

RULINGS

1. The [TAXPAYER'S] products are not exempt from Tennessee sales tax.
2. These products cannot be purchased for resale because the hospital is the user of the product.

3. [THE TAXPAYER] cannot accept a resale certificate because the hospital is the user of the product.

ANALYSIS

T.C.A. § 67-6-314 provides a list of specific medical equipment that is exempt from the Tennessee Sales and Use Tax. Paragraph (5) of this statute, in pertinent part, provides an exemption for “prosthetics.” This exemption was intended to exempt a “prosthesis” which is a device used to replace a missing body part or to augment a body function. Cardiac pacemakers and hydrocephalus valve systems have been held by the Tennessee Courts to be exempt under this provision. *Cordis Corp. v. Taylor*, 762 S.W.2d 138 (Tenn. 1988). There exists no specific exemption, however, for surgical tools or appliances used to perform surgery or invasive medical procedures.

[THE TAXPAYER] argues that just as hydrocephalus valve systems support the flow of fluid from the brain to blood, *Cordis, supra*, and parenteral feeding systems support ingestion by delivering nutritional fluids directly into blood, *Nutritional Support Services v. Taylor*, 803 S.W.2d (Tenn. 1991), [THE TAXPAYER’S] catheters are also prosthetic devices because they support the flow of blood by widening the narrowed arteries.

[THE TAXPAYER’S] argument is flawed, however. The catheter inserted into the brain during the hydrocephalus valve system serves as the valve through which the fluids flow. In this manner the catheter replaces the function of an artery. The parenteral devices also consist of tubes and catheters through which the nutritional fluids are injected. If the PTCA catheter were to similarly provide an alternate conduit for the coronary artery, this would replace the function of the artery and therefore serve as a prosthetic. Instead, PTCA catheters are surgical tools, much like a scalpel. They enter the artery and remove the obstruction by compressing the plaque, thus allowing the artery to function as it naturally should. A PTCA catheter is a tool for repairing arteries rather than a prosthetic substitute for an artery.

Because the [TAXPAYER’S] products are not prosthetics, they are not subject to the sales tax exemption provided under T.C.A. § 67-6-314(5).

The hospitals which purchase [TAXPAYER’S] products do so not for resale purposes but rather for their own use. A sale requires a transfer of title or possession of tangible personal property for a consideration. *Volunteer Val-Pak v. Celauro*, 767 S.W.2d 635, 636 (Tenn. 1989). The hospital does not transfer title or possession of the [TAXPAYER’S] products to the patient. After the [TAXPAYER’S] products are removed from the body they are disposed. The fact that the products may be itemized on the patient’s bill indicates that they were used by the hospital during the PTCA procedure, not that they were sold to the patient.

[THE TAXPAYER] cannot accept a resale certificate in good faith from a hospital purchasing these taxable medical products. Tennessee Department of Revenue Sales and

Use Tax Rule 1320-5-1-.68(4) provides that a wholesaler or dealer may not accept a resale certificate when, “he knows, or should know in the use of ordinary care, that the property or service which he is selling is not for resale by the purchaser.” Because the very nature of these products indicates they are not resold, [THE TAXPAYER] should know that it cannot accept a resale certificate.

Stephen M. Smith, Staff Attorney

APPROVED: Joe Huddleston, Commissioner

DATE: 11-10-94